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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

National Cable Television Association

Daniel L. Brenner
Vice President for Law &
Regulatory Policy

1724 Massachusetts Avenue, Northwest
Washington, D.C. 20036-1969
202 775-3664 Fax: 202 775-3603

November 4, 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

RE: MM Docket No. 92-266

Dear Mr. Caton:

On November 4, 1993, Daniel Brenner of the National Cable Television Association wrote to Maureen O'Connell of Chairman Quello's office regarding the above captioned docket. Correspondence is attached.

Sincerely,



Daniel L. Brenner

DLN:ldh

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November 4, 1993

DELIVERED BY HAND

Maureen O'Connell, Esquire
Legal Advisor to Chairman Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Dear Maureen:

I write to urge the Commission to postpone the November 15 operator response date in the Rate Regulation proceeding.

It is reported that the Commission is likely to announce an extension of the cable rate freeze order, which now expires on November 15, 1993. It is unclear, however, whether the Commission will also extend the November 15 response date to pending complaints or notices of local certification. The following reasons demonstrate the need for an extension of time in which to file responses to Form 393 complaints.

It should be noted at the outset, that any postponement in the November 15 response date will not adversely affect consumers or regulators: any later determination that a particular rate is unreasonably high may be accompanied with a demand for refund of any excess fees paid.

1. The Commission has not yet issued rules governing the filing of cost-of-service justifications for above-benchmark rates.
 - a. Even in the absence of guidelines, operators will be required to submit cost justifications on November 15, 1993. Unless the Commission is prepared to address those submissions immediately it will be difficult, if not impossible, to later consider those submissions under standards which differ in any way from those adopted in the cost-of-service proceeding. This is likely even if the Commission allows cost-of-service showings different from the approach taken in the FCC's proceeding because of the need to treat parties in a like manner. Given the absence of notice as to the specific rules, operators will need to resubmit data in conformance with the new rules. This is duplicative and administratively burdensome.
 - b. Franchising authorities that do consider cost justifications during the interim period may end up using very different standards from those adopted by the FCC. (And unlike the FCC, franchising authorities cannot postpone consideration of rate submissions and are bound by rules on timeliness.) What standards would the FCC then use when reviewing decisions by franchising authorities? May a franchising authority adopt a streamlined approach to cost-of-service regulation?

2. The Commission has not yet issued a ruling on whether operators must employ the identical regulatory approach to all levels of regulated service.
 - a. With the November 15 date so near, operators would be unable to adjust their approach to conform to any decision by the Commission between now and then. (Even if a decision were to be issued by early next week, operators would have only a day or two in which to rethink and revamp their approach to each and every system affected by the ruling.)
3. To the extent that complaints address issues that are still pending resolution on reconsideration, those complaints cannot be resolved on a timely basis. A delay in the November 15 response date would not adversely affect resolution of these complaints since the validity of the complaints as opposed to the operator's response (see # 7, infra) will depend on future orders.
4. To date operators have not begun to receive communication from the FCC or from the contractor overseeing initial processing of complaints as to whether specific complaints have been rejected, even though it has been reported that many hundreds of complaints have, in fact, been dismissed. The Commission's own listing of pending complaints is not up to date. Under the circumstances operators would be required to respond to defective complaints even where the complaints have already been dismissed. Although there have been assurances that proper notifications will be forthcoming, there is too little time for operators to be informed prior to November 15 and it is simply unfair to require operators to undergo the expense and time involved in preparing responses to invalid complaints.
5. The Commission has not put into place procedures to facilitate the processing of responses to complaints; there has been no direction to date regarding the form or specific content of responses.
6. The Commission has not updated the inflation index on the Form 393 although the number used on that form has been revised. Other problems with Form 393 have been identified for the Bureau (see attached letter to Alexandra Wilson). This could lead to faulty submissions that will be required to be revised, and it will lead to delay in establishing current rates by franchising authorities who have no references on which to rely.
7. There are requests for reconsideration and/or clarification of issues still pending before the Commission that could affect the manner in which cable operators respond to complaints or submissions to franchising authorities. For example, the extent to which federal confidentiality provisions pre-empt state or local disclosure requirements directly impact which proprietary information that an operator will be able to submit in a complaint. Similarly, absent resolution of pending questions regarding rate treatment of existing individual bulk accounts, operators do not know the extent to which they may need to justify such rates and, thus, submit cost-of-service showings.
8. Until the Commission has established methodologies for increasing rates for additional channels and for dealing with external costs, operators cannot make an informed decision

as to whether, over the long run, benchmark rates and price caps will provide adequate revenues or whether they will be required to submit cost showings. Determination may lead a party to respond to complaints differently.

9. The outstanding issues remaining to be resolved and the absence of cost-of-service regulations all suggest that operators, franchising authorities, and the Commission will be required to review submissions that will be subject to revision, resulting in additional expense, administrative inefficiencies, and confusion for all parties. Thus, it would be in the interest of all parties to defer the response date until regulations are in place which operators may rely upon to make their submissions and calculations.

It is respectfully urged that, in view of the above, the deadline for filing Form 393 complaint and certification notice responses be extended to the end of the freeze period or 30 days after release of the Commission's decisions in response to the Cost-of-Service Notice of Proposed Rulemaking and the Third Notice of Proposed Rulemaking in Rate Regulation, whichever is later.

Respectfully submitted,



Daniel L. Brenner

DLB:ldh

Attachment

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National Cable Television Association

Legal Department

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1724 Massachusetts Avenue, Northwest
Washington, D.C. 20036-1969
202 775-3664

November 3, 1993

BY FAX

Ms. Alexandra Wilson
Chief, Cable Services Division
Federal Communications Commission
Room 918A
2033 M Street, NW
Washington, DC 20554

Dear Sandy:

Thank you for taking the time to meet with NCTA's Accounting Committee on Friday. In response to your request, enclosed is a list of outstanding issues associated with the Form 393 filing, both procedural and substantive, that our member companies have brought to our attention.

If you need any additional information or have any questions regarding the attached list, please give me a call.

Sincerely,



Diane B. Burstein

Enclosures

cc: Maureen O'Connell

DBB:ldh

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Outstanding Questions Pertaining to FCC Form 393

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Commission's rules currently require cable operators to begin justifying their rates for regulated service and equipment on November 15. The following is a list (not necessarily exhaustive) of substantive and procedural issues that the Commission needs to resolve prior to the initiation of the rate justification process. Most of the issues have previously been brought to the Commission's attention, either in writing or in telephone conversations with the staff.

1. Administrative/Procedural Issues

- Can systems submit computer generated versions of Form 393?
- Can Form 393 be filed with the FCC Secretary or must they be mailed to the P.O. Box identified on the Form? When must the Form be received at the P.O. Box and how can the system confirm receipt?
- Must the operator provide a copy of its Form 393 to every complainant or just the initial complainant? How should a cable operator respond to complaints received after Form 393 is filed but before a decision has been rendered?
- How can an operator determine whether a Form 329 complaint has passed initial FCC review? It is our understanding that the Commission's contractor has not been notifying cable operators when a Form 329 has been deemed defective and that the process of correcting this oversight has only just begun. (Similarly, it has not been possible to obtain an accurate print out of the status of the Form 329s filed to date.) Are cable operators required to respond to obviously defective Form 329 complaints if they have not yet received a notice of dismissal of that complaint from the FCC?
- Does the time period for responding to a Form 329 run from the date on the form or the date the service copy was postmarked? For example, where the date on the Form is October 8, but the copy sent to the operator was not postmarked until November 1, how is the 30-day response period computed?

2. Form 393

- Form 393 was designed to be used once. Must an operator complete a new Form 393 for filing November 15, or may he use the existing one? Many systems that established new rates effective September 1 using Form 393 are finding that their new rates are not validated when they recomplete the form using current data.
- For example, a system's "base rate per channel" includes equipment revenues. A system that had a below benchmark "base rate per channel" in August may now

find that, when it completes Form 393 using its September 1 rates, it is "over benchmark" because it is "double counting" equipment revenues. This problem could be cured if operators are allowed to use the same figure for lines 104 and 301.

- The inflation adjustments to Form 393 also are creating uncertainty. Most operators based their September 1 rates on inflation data available in mid-August. Subsequent to the calculation of these rates, revised inflation numbers were issued. Future revision in the inflation numbers may occur in early December, prior to the submission of many 393s. As a result of these revisions, Form 393s completed on or after November 15 by some cable operators may not accurately reflect the rates they adopted in September. May these systems, in submitting rates on November 15, use the same GNP-PI numbers available in mid-August that were used in computing their September 1 rates? Will the Commission's "going forward" determinations take into account the inflation adjustment that a cable operator used in its original Form 393?
- Many cable operators have had to add signals (especially home shopping stations) since September 1. It is unclear how the addition of these or other channels affects a system's maximum permitted rate. If these stations are not treated as "going forward" additions, a system could find that the addition of a station to the basic tier lowers the permitted rate for non-basic rates, leaving the system liable for refunds. Should the channel count (and satellite/total mix) be as of November 15, September 1, or some other date?
- Must an operator refresh data, such as cost information from the date it most recently closed its books, if a subsequent quarter's information is now available?
- The decision to limit system-wide rate justifications to circumstances in which a system not only has uniform rates and franchise fees but also has obtained franchising authority consent to a system-wide rate computation has been challenged on reconsideration. It also has been suggested that the Commission intended to permit system-wide filings either when all of the factors are uniform or when a franchising authority has agreed. This issue needs to be resolved. Otherwise, tier penetration within a particular franchise area could lead to different rates in each franchise area.

3. Cost-of-Service

- The Commission has not offered guidance on how cable rates are to be established if an operator elects to utilize a cost-of-service approach.
- If a cable operator elects to justify its rates for one or more tiers using the "benchmark" approach, is it thereby bound to utilize the same approach to justify its rates for all tiers?